

STATE OF MICHIGAN
COURT OF APPEALS

MAROUN J. HAKIM, Personal Representative of
the Estate of JEFFREY ALLEN HAMMOND,
Deceased,

Plaintiff-Appellee,

v

ANGELA JEAN GUASTELLA and WILLIAM
HANLEY,

Defendants-Appellants.

UNPUBLISHED
December 19, 2006

No. 270322
Macomb Circuit Court
LC No. 05-002503-NI

Before: Murphy, P.J., and Smolenski and Kelly, JJ.

SMOLENSKI, J. (*dissenting*).

Although the record clearly contains evidence that Hammond acted negligently when he crossed the road, see *Malone v Vining*, 313 Mich 315, 321; 21 NW2d 144 (1946) (noting the duty applicable to pedestrians crossing a road), there is also evidence that defendant Guastella breached her duty to use ordinary and reasonable care in the operation of her car. A jury could reasonably conclude that, when Guastella observed the traffic ahead slowing or stopping despite the absence of a traffic device requiring that action, she should have exercised caution to assess the situation. Instead, without a clear view of the situation, Guastella immediately changed lanes and attempted to pass the slowing traffic. Cf. *Johnson v Hughes*, 362 Mich 74, 77-78; 106 NW2d 223 (1960); *Gamet v Jenks*, 38 Mich App 719, 724-725; 197 NW2d 160 (1972). Because there is evidence from which a jury could conclude that Guastella breached her duty and caused Hammond's death, there is a genuine issue of material fact and the matter should properly be decided by a jury. See MCR 2.116(C)(10); *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Therefore, I must respectfully dissent from the majority's decision to reverse the trial court and grant summary disposition in favor of defendants.

/s/ Michael R. Smolenski